

The JTM approach offers a more simplistic alternative by replacing the present system with a process that focuses on end results, or overall revenue requirements, rather than detailed cost categories. Consequently, once JTM is in place, there is no need for Part 36 rules with the possible exception of Subpart G Lifeline Connection Assistance Expense Allocation (sections 36.701 — 36.741). The dollar flow attributable to the Universal Service Fund will have been identified and will continue. It can be adjusted annually on a dollar for dollar basis as reductions to the USF funding requirements occur pursuant to the plan discussed above in the Universal Service Fund section.

The Jurisdictional Transfer Mechanism described below is intended to replace the existing separations system in its entirety. The JTM system is comprised of two components:

- An Interstate Transfer Value for Capital (ITVC), initially set for each LEC at the percentage of the overall level of rate base presently being allocated to the interstate jurisdiction; and
- An Interstate Transfer Value for Expenses (ITVE), initially set for each LEC at the percentage of the overall level of total operating expenses (other than depreciation) presently being allocated to the interstate jurisdiction. Depreciation expenses are assigned in accordance with the ITVC.

Separate ITVs would be developed for each state, thereby leaving undisturbed the existing, varying, state/interstate ratios found across the country. This new, results-oriented, approach begins with the examination of the existing interstate allocations of LEC plant and operating expenses for each state. Once these interstate transfer value percentages have been identified, they would be frozen and applied to total company plant and expense amounts on a going-forward basis annually.

Unlike current separations practices, under a JTM approach, the costs associated with new network technologies would not be distorted by technologically obsolete categorization rules. There would be no need to force the new technology into the mold created for an older and at this point outdated network architecture, and potential changes would not experience the extensive delays existing practices engender.⁵³

53. Although we do not include such a recommendation in our proposal, it would be possible to transition the ITVC and ITVE upward or downward over time through the use of an indexing mechanism. For example, movement toward a lower overall interstate assignment could be accomplished through a stepped phase-down of the ITV percentages.

Access and Competition: The Vital Link

An interim approach to correction of the separations mechanism problems

As we have stated above, our primary concern with the existing separations mechanism is that, because of the interrelationship between Part 36 (Separations) results and Part 69 (Access Charges) costing and pricing rules, the separations process *drives* access costing and pricing policy. The present system necessarily flows through all of the known flaws of the separations system over to the access pricing environment. Acknowledging that the reform of separations is likely to take some time to implement, we believe that a transition program should be initiated at this time.

The initial step in this transition is to in essence divorce Part 36 (Separations) from Part 69 (Access Charges) of its rules. Like the JTM proposal, this proposal represents a dramatic departure from the traditional way of thinking about Parts 36 and 69. There is, however, no legal reason why the Commission cannot revise Part 69 so that it relies upon the bottom line revenue requirement results of Part 36, but does not necessarily attribute costs to Access Charge categories on the same basis as Part 36.⁵⁴ State regulators do not base intrastate ratemaking decisions upon category-by-category results of the Part 36 assignment of revenue requirement to the intrastate jurisdiction; rather, they use the separations results for the development of an overall revenue requirement only. Ratemaking decisions are made based upon factors such as marginal costs and public policy goals. There is nothing to stop the FCC from approaching Part 69 on just such a basis.

Through this proposal, we are not suggesting that the Commission ignore the issue of separations reform; rather, we are proposing a method to allow it to go forward with access reform at the same time it is travelling down what is likely to be a long and contentious road towards final reformation of separations. Although the Ad Hoc Committee has for a number of years been an advocate of first fixing the separations system and then addressing access charge reform, we believe that the confluence of competition, technology changes and pending legislative changes has caused the time for that approach to have passed.

Our proposed interim solution is for the Commission to begin *two separate rulemaking proceedings that would proceed on parallel paths towards better reflecting the economic and competitive realities of today's interstate telecommunications environment*. One proceeding would begin reformation of Part 36, and a second proceeding would reform Part 69 by first divorcing that section of the Rules from Part 36, and then reforming the access charge structure to be more responsive to the needs of today's telecommunications

54. This approach achieves the same result for access service pricing as our JTM proposal above. It frees the FCC to develop access service prices in an economically efficient manner. While this solution does achieve our separations goals relative to access service pricing, it does nothing to correct the inefficiencies of the present separations system.

markets. Since the same set of conditions would be driving both proceedings (i.e., technological changes, competition, ...), it can be expected that the results of both proceedings would trend in the same direction.

Separation of the Part 69 rules from Part 36 will allow the Commission to begin evaluating new, more cost-based rate structures and rate levels. Movement toward more cost-based prices can only increase efficient use of the network, thereby accelerating telecommunications-driven productivity increases, and creating US jobs.

VII. Reformation of Part 69 Access Charge Rules

After reformation of the principles and methods used to fund Universal Service, and after it has de-linked separations and access charge rules as proposed above, the Commission can begin the fundamental reexamination of its Access Charge rules. Reexamination of the Access Charge rules should be a continuing process. Certain issues should be addressed in the near term; other issues should be considered only when market and/or technological developments justify change.

Local Exchange Carriers have sought, and will continue to seek, additional pricing flexibility for access services. Their lobbying efforts on this matter are likely to be relentless. Already the Commission has before it Ameritech's "Customers First Plan" and NYNEX's "Universal Service Preservation Plan." Both plans seek waivers of Commission access charge and price cap rules. These requests come even though the Commission in the *Expanded Interconnection and Transport Pricing* dockets has granted LECs additional pricing flexibility in the form of Zone Density Pricing Plans when LECs actually provide co-location to competing interconnectors.⁵⁵ Obviously, at least some LECs want significant additional pricing flexibility.

Other parties, including competitive access providers, long distance carriers and major end users have opposed LEC efforts to gain additional pricing flexibility through the use of waiver requests.⁵⁶ The Ad Hoc Committee is one of the parties that has opposed such waiver requests. The Ad Hoc Committee has argued that the pricing flexibility waiver

55. *Expanded Interconnection with Local Telephone Facilities, Transport Phase I; Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board*, CC Docket No. 91-141 (Transport Phase I); CC Docket No. 80-286, Second Report and Order And Third Notice Of Proposed Rulemaking, 8 FCC Rcd 7374 (1993) (*Switched Transport Order*) at Para 99.

56. See for example, Reply Comments of MFS Communications Company, Inc., *In the Matter of NYNEX Petition for Waiver*, filed March 2, 1994; Reply Comments of Sprint Communications Co., *In the Matter of NYNEX Petition for Waiver*, filed March 2, 1994.

requests raise issues that are only appropriately considered within the context of a comprehensive rulemaking.⁵⁷ Such issues include the possible impact of access charge pricing flexibility on geographic averaging of toll rates and the appropriate measure of effective competition. The Commission must develop a rigorous approach to evaluating market conditions for purposes of determining when effective competition exists. Once effective competition exists, the Ad Hoc Committee would support very substantial pricing flexibility for LEC. The Committee has no interest in protecting competitive access providers from price competition when the relevant markets are effectively competitive. On the other hand, extending substantial pricing flexibility to LECs *before* the relevant markets are effectively competitive could destroy emerging competitors or, more likely, prevent the exchange and access service markets from becoming as competitive as they might otherwise become. Pricing flexibility should not precede effective competition, nor should it substantially lag behind the emergence of effective competition. At a minimum, pricing flexibility raises difficult standards-setting and timing issues.

Other aspects of the access charge rules, however, should be amended as soon as possible. Certain costs currently are recovered as traffic-sensitive when they should be considered and recovered as non-traffic-sensitive costs. Other costs are considered distance-sensitive and recovered as such when there is good reason to believe that the cost of the relevant plant is not nearly as distance-sensitive as the current recovery method. Additionally, requiring non-carriers to purchase Basic Service Arrangements (BSAs) at uneconomic, excessive rates as a condition precedent to acquiring Basic Service Elements (BSEs) is a policy which will only work to frustrate the goals of all those who support increasing utilization of the telecommunications network to spread knowledge, increase efficiency, contribute to job growth and generally to enhance the well-being of this society. These deficiencies in the Commission's access charge rules and policies can be corrected before the Commission settles upon new policies defining and supporting Universal Service, modifying the Separations rules and developing a rigorous approach for determining when LECs should be granted additional pricing flexibility.

Part 69 of the Commission's Rules should be modified as events warrant

The Ad Hoc Committee has been an active participant in the access charge process since its inception, and through those efforts and ongoing experience operating under this regime has identified a number of specific deficiencies in the present Part 69 Rules. We list below the specific sections which we believe should be amended, and the reason for modifying the relevant provision. The Ad Hoc Committee is not here proposing specific

57. See Comments of the Ad Hoc Telecommunications Users Committee, *In the Matter of NYNEX Transition Plan to Preserve Universal Service In A Competitive Environment ("Petition For Waiver") Requests(Undocketed)*, filed January 31, 1994 p. 2.

amending language. At this time, it seems more productive to focus upon the issues that should be addressed in a comprehensive review of the access charge rules, and the preferred resolution of those issues, rather than on specific amendments. The wordsmithing can come later.

The following sections of Part 69 of the Commission's rules should be amended for the indicated reasons:

- 69.2 (Definitions): Amendment of this section will be needed to accommodate third party access to the intelligent network For Intelligent Network and the interconnection of competing networks.
- 69.4 (Charges to Be Filed): See comments for section 69.2.
- 69.104 (End-User Common Line Charge): For the general body of residential and single-line business customers, capping the end-user common line charge at \$3.50 per month is not good public policy. The end-user common line charge should gradually transition to a cost-based level. Of course, appropriate subsidy should continue to be available for end-users who qualify for lifeline service. To the extent that an alternative provider of common line service exists and the alternative provider provides such service at a lower rate, the level of subsidy should be keyed to providing access to the low cost provider. Eventually, the definition of local exchange service may require change. For customers that desire more advanced telecommunications services than basic dial tone service, the end-user common line charge should reflect the monthly non-traffic-sensitive costs of providing the loop from the serving wire center to the customers' premises, subject to the users qualifying for assistance pursuant to a needs test.
- 69.105 (Carrier Common Line Charge): The carrier common line charge should be reduced as the end-user common line charge increases and as the level of subsidy is reduced through provision of service from lower cost providers.
- 69.106 (Local Switching): Currently, the costs of local exchange switching facilities is recovered via per minute charges. At least some portion of digital switches should be treated as non-traffic-sensitive and the costs associated with that portion of the digital switches should be recovered via non-traffic-sensitive rate elements.
- 69.108 (Transport Rate Benchmark): This section of the Commission's rules should be subject to further revision to reflect the outcome of phase 2 of the Commission's Transport Rate Structure proceeding (CC docket NO. 91-213).
- 69.110 (Entrance Facilities): Entrance facilities are rated as distance-sensitive facilities under Part 69 of the Commission's Rule. Some parties assert that fiber optic

facilities are much less distance sensitive than copper facilities but that this different cost characteristic is not reflected in the current access charge rules. This section of rules should be considered subject to change in phase 2 of the transport rate structure proceeding.

- 69.111 (Tandem Switched Transport and Tandem Charge): See comments relative to Sections 69.106 and 69.110.
- 69.112 (Direct Trunked Transport): See comments regarding Section 69.110.
- 69.116 (Universal Service Fund): This section of the access charge rules requires a charge on most inter-exchange carriers that use local switching for the provision of their services. The monies collected pursuant to this charge are used to support the Universal Service Fund. To the extent that subsidization of universal service is found to be consistent with public interest, some level of support should be collected from competing carriers that originate and terminate long distance service. But first, the Universal Service Fund should be properly sized. The Universal Service Fund should not be considered as a pool used to support local exchange carrier revenue requirements.
- 69.117 (Lifeline Systems): This section may need to be reexamined for the same reasons that the Universal Service Fund should be reexamined. See comments regarding Section 69.116.
- 69.118 (Traffic-sensitive Switched Services): This section of the rules refers to two FCC orders as the basis for allowing local exchange carriers to establish separate charges for basic service elements and 800 database service, and could be revised in the future. When the FCC adopts rate setting methodologies for access to the Intelligent Network this section must be modified.
- 69.123 (Density Pricing Zones for Special Access and Switched Transport): This section logically should be further revised if and when the local exchange carriers are granted additional pricing flexibility.
- 69.124 (Interconnection Charge): This section currently serves to keep whole all local exchange carriers that are subject to expanded interconnection and transport competition. The interconnection charge can be used to limit competition. This charge should be reviewed as the Commission reconsiders its approach to universal service support and separations and as competition in the local exchange and access service markets develops.
- 69.203 (Transitional End-User Common Line Charges): This section sets the current end-user common line charge for residential and single business line users at

\$3.50/month. This charge must increase. The \$3.50 charge certainly should not be relevant for customers that seek advanced telecommunications services, except for those customers that satisfy a needs test.

- 69.306 (Central Office Equipment): Central office equipment costs are currently allocated and recovered on a usage sensitive basis. Some of these costs, particularly for digital switches, should be recovered on a non-traffic-sensitive basis.
- 69.307 (General Support Facilities): Costs which are not directly assigned to line information database services and billing and collection service is allocated on the basis of central office equipment (69.306). To the extent that central office equipment is misallocated, as is likely the case, general support facilities costs also will be misallocated.
- 69.401: (Direct Expenses): This rule needs to be revised in keeping with the changes being recommended for the other sections of Part 69.
- 69.501: (Revenue Requirement Assigned to Carrier Common Line Charge): In the long-run, additional revenue requirement cannot be recovered through an interconnection charge or other quasi-monopoly charge. This allocation of additional revenue requirement should be phase out if and when effective competition emerges.

VIII. Price Caps Review

Although not a part of the formal "access charge reform" process, the ongoing 1994 triennial review of the LEC price caps plan *must not* occur in isolation from the other changes being discussed for the Access Charge System. In reviewing the existing price caps structure the Commission must remain aware that the addition of any greater pricing flexibility than is already available may well limit the development existing and potential LEC competitors.

IX. Conclusion

Reform of the Access Charge System (encompassing access charge structure, separations, universal service funding and pricing rules) *is not just of importance to direct purchasers of access services (i.e., IXC's)* — but to anybody who believes that a competitive environment for telecom services is preferable to a monopoly environment. The proposals discussed in detail above offer a road map for the reform of that system. We urge the Commission to frame a set of solutions to the questions the entire industry is now grappling with through the institution of a NPRM detailing new rules for separations,

universal service definitions and funding, and access charge structure and pricing. Our proposals for those rules are summarized below:

Universal service funding

- Funding for universal service should be based upon existing definition of basic service (pending demonstrated customer demand for an expanded definition, and development of threshold tests for measuring that demand).
- Before funds are distributed to assist with the provision of service in "high cost" exchanges, competing firms should be allowed to bid to provide service at a lower cost (thereby improving overall economic efficiency, and lower the size of the overall fund). Protective mechanisms must be instituted to protect telephone subscribers in the event an unqualified provider bids for and receives the right to receive subsidies.
- USF funds that are now collected from IXC's on the basis of presubscribed lines obtained from LEC's should instead be collected based upon an assessment against loop facilities provided by all local service providers, including LEC competitors.
- USF funds should no longer be collected and distributed by NECA, but rather by a neutral party that is not a service provider.

Separations

- The existing separations system should be replaced with a gross allocation mechanism similar to the *JTM* plan described above.
- Alternatively, as a transitional mechanism, the Commission should divorce Part 36 (Separations) from Part 69 (Access Charges) of its rules. Allowing Part 69 to continue rely Part 36 *only* for the development of the bottom line revenue requirement.

Part 69 Access Charge Rules

- Access pricing should be de-linked to the cost categorizations and other constraints inherent in the present jurisdictional separations mechanism, and reform should proceed concurrently with separations reform.
- Access charges should be made to track more closely to underlying costs. Carrier-specific access charge structures (e.g., the NYNEX USPP) should not be allowed.

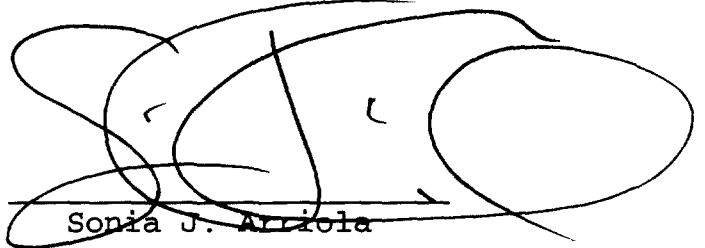
CERTIFICATE OF SERVICE

I, Sonia J. Arriola, a secretary in the law firm of Gardner, Carton & Douglas, certify that I have this 15th day of April, 1994, mailed, via first-class mail, postage prepaid, a copy of the foregoing **PETITION FOR RULEMAKING OF THE AD HOC TELECOMMUNICATIONS USERS COMMITTEE** to the following:

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